

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Poochigian Analyst: Roger Lackey Bill Number: SB 299
Related Bills: See Legislative History Telephone: 845-3627 Introduced Date: 02-03-99
Attorney: Doug Bramhall Sponsor: _____

SUBJECT: Reimbursement Claims For Fees & Expenses Related To BOE Appeal/BOE Grant Hearing

SUMMARY

This bill would provide an oral hearing before the Board of Equalization (BOE) for taxpayers that file a claim for reimbursement of fees and expenses incurred related to a hearing before the BOE. This bill also would include fees and expenses incurred at the oral hearing in the amount that may be reimbursed. This analysis will discuss only appeals relating to actions of the Franchise Tax Board (FTB).

EFFECTIVE DATE

This bill would be effective January 1, 2000.

Legislative History

AB 2250 (97/98), AB 713 (Stats. 1997, Ch. 600), AB 1488 (1997/98).

SPECIFIC FINDINGS

Under current federal law, taxpayers petition the Tax Court to appeal an adverse Internal Revenue Service (IRS) action with respect to deficiency assessments. Taxpayers may be entitled to reimbursement of expenses for representation before the Tax Court. To be entitled to reimbursement, the taxpayer must have exhausted all administrative remedies and prevailed in court. Only expenses incurred after the earlier of the date of (1) the taxpayer's receipt of the decision of the IRS office of appeals or (2) the date of the notice of deficiency can be reimbursed.

In addition, several federal court cases, including a United States Supreme Court case, have determined that a federal taxpayer can seek reimbursement for fees and expenses incurred in the federal fee dispute proceeding (Commissioner, INS v. Jean (1990) 496 US 154, 110 S.Ct. 2316, 110 L.Ed. 2d 134; Powell v. Commissioner (1990) 891 F.2d 1167, applicable to Internal Revenue Code Section 7430 claims for taxpayer reimbursement for fees and expenses).

Under current state law, taxpayers may appeal adverse FTB actions on protests of deficiency assessments and claims for refund to the BOE. In the event of an adverse determination by the BOE, the taxpayer, after paying the amount due, may bring an action for refund against FTB in Superior Court.

Board Position:

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_____ N	_____ OUA	_____ X PENDING

Department Director

Date

Gerald Goldberg

3/9/1999

Under current state law, taxpayers may be reimbursed for expenses (i.e., costs, fees or other expenses) to be represented before the BOE or in court. However, to be entitled to appeal expenses, the taxpayer must exhaust all administrative remedies and prevail before the BOE or in court. For both litigation and BOE hearing expenses, FTB must establish that it was substantially justified in its position. FTB's position is presumed not to be substantially justified if the FTB did not follow its applicable published guidance (e.g. regulation, legal ruling, notice, information release, announcement, or any chief counsel ruling or determination letter). For cases before the BOE, the reimbursement is limited to the fees and expenses incurred after the date of filing an appeal of a notice of action with respect to a deficiency assessment or jeopardy assessment or denial of a claim for refund. The law does not specifically provide for reimbursement of fees and expenses incurred in the fee dispute proceeding itself (i.e., filing the reimbursement claim, hearing by the BOE on that claim).

Under current practice, BOE has jurisdiction to reimburse taxpayer fees and expenses through a hearing after both parties file statements. The BOE is not required to grant an oral hearing to the taxpayer on the reimbursement claim. The hearing may be based solely on each party's written statement rather than an oral hearing, at the BOE's discretion.

This bill would provide that every taxpayer that files a claim for those fees and expenses incurred as a result of a hearing with the BOE shall be granted an oral hearing before the BOE regarding such fees and expenses. This hearing shall not be granted if the taxpayer waives their right to the hearing in writing, or if the BOE or the FTB concedes the underlying tax appeal and agrees to the taxpayer's claim for fees and expenses.

This bill would provide that the BOE shall give the taxpayer 60 days notice of the time and place of the hearing. The BOE would be able to reschedule such hearings as may be necessary.

In addition, **this bill** would include in the claim for fees and expenses, the fees and expenses incurred as a result of the claim itself.

Policy Considerations

This bill would require that taxpayers be granted an oral hearing on fee or expense reimbursement claims, **unless the taxpayer waives that right**. BOE Regulation 5076.1, which applies to appeal hearings, provides that the appeal is submitted for decision on the basis of written record **unless the taxpayer requests an oral hearing**. This bill would make the procedures for fee or expense reimbursement claim hearings separate from procedures for appeal hearings.

Implementation Considerations

As written, the bill would become effective on January 1, 2000. However, it is unclear how the provisions of the bill would be applied. Clarification of the author's intention would ensure appropriate implementation. For example, if the provisions are intended to apply to appeals filed after the effective date of the bill, as were previous amendments to the section, language so stating should be included in the bill.

Once the above issue is resolved, implementation of this bill would occur during the department's normal annual updates.

FISCAL IMPACT

Departmental Costs

The departmental costs associated with this bill are unknown. Recently, fee reimbursement claims by taxpayers have increased, and this bill would include fees and expenses from the oral hearing in the costs that the taxpayer may recover. Since this bill is not funded, the department would be required to submit a budget change proposal request or redirect costs from another area of its budget to cover the additional costs subject to reimbursement by the bill and the additional staff hours related to the increase in oral hearings.

Tax Revenue Estimate

This bill has no impact on state income tax liability.

BOARD POSITION

Pending.